



**Federal Communications Commission  
Washington, D.C. 20554**

August 28, 2007

**DA 07-3760**

*In Reply Refer to:*

1800B3-KD

Released: August 28, 2007

Mr. Jim Ward  
136 Brentfield Loop  
Morrisville, NC 27560

Ms. Jody Page  
5209 Birchleaf Dr.  
Raleigh, NC 27606

Mr. W. Herbert Brown, Jr.  
4009 River Ridge Rd.  
Charlotte, NC 28226

Mr. Harry Johnson  
6827 Rosemary Lane  
Charlotte, NC 28210

Mr. Hugh Ashcraft  
2334 Ainsdale Rd.  
Charlotte, NC 28226

Mr. Christopher Spence  
7504 SW 128<sup>th</sup> Terr.  
Archer, FL 32618

Dorann Bunkin, Esq.  
Wiley Rein LLP  
1776 K St., N.W.  
Washington, DC 20006

In re: WDCG(FM), Durham, NC  
Facility ID No. 53597  
Capstar TX Limited Partnership  
File No. BRH-20030801COM

Application for Renewal of License

**Informal Objections**

Dear Objectors and Counsel:

This letter refers to the captioned application of Capstar TX Limited Partnership ("Capstar") to renew the license of radio station WDCG(FM), Durham, North Carolina. Also on file are objections ("Objections") filed against that application by the following objectors (collectively, the "Objectors"): (1) Harry Johnson, Charlotte, North Carolina, FCC date-stamped November 3, 2003; (2) Jim Ward, President, Raleigh Area Triathletes, Morrisville, North Carolina, date-stamped October 24, 2003; (3)

Hugh Ashcraft, Charlotte, North Carolina, date-stamped November 4, 2003; (4) W. Herbert Brown, Charlotte, North Carolina, date-stamped November 4, 2003; (5) Jody Page, Raleigh, North Carolina, date-stamped November 4, 2003; (6) Christopher M. Spence, Archer, Florida, date-stamped November 10, 2003, and (7) Paul M. Griffin, Charlotte, North Carolina, date-stamped November 10, 2003. For the reasons set forth below, we deny the Objections and grant the renewal application.

**Background.** Objectors allege that, on September 22 and 23, 2003, WDCG(FM) aired comments from hosts and callers during the *Bob and Madison Show*, which expressed contempt for bicyclists and suggested that motorists run them off the road or throw bottles at them. Six of the seven Objections ask the Commission to deny the station's license renewal as a result of these comments.<sup>1</sup>

On November 26, 2006, Capstar filed a response to the Objections, arguing that the issues raised in the Objections do not warrant denial of WDCG(FM) license renewal. Instead, Capstar contends that the station has served the public interest by, for example, regularly broadcasting programming that focuses on local and national issues, providing public service announcements on behalf of non-profit and public interest organizations, and participating in local charity activities. Capstar also contends that it took immediate remedial action in response to the concerns raised by listeners regarding the comments made on the *Bob & Madison* show by issuing an official apology, temporarily suspending the morning show team, and taking actions to promote cycling safety. In addition, Capstar states that WDCG(FM), along with four other stations in the same radio market owned and operated by Capstar's corporate parent, Clear Channel Communications, Inc., have recently aired more than 1200 public service announcements promoting safe cycling practices.

**Discussion. Procedural Matters.** Initially, we note that the Objections filed by Ashcraft, Brown, Page, Spence and Griffin are styled as petitions to deny, but none provide an affidavit to support any allegations of fact, as required by Section 309(d)(1) of the Communications Act of 1934, as amended (the "Act").<sup>2</sup> While the Objection filed by Johnson was notarized, we find that Johnson lacks standing to bring a petition to deny WDCG(FM)'s renewal application because he lives in Charlotte, which is outside WDCG(FM)'s service area, and has not indicated that he is a regular listener of the station.<sup>3</sup> Given these procedural defects, the petitions to deny filed by these Objectors must be dismissed.<sup>4</sup> We will, however, treat them as informal objections pursuant to Section 73.3587 of the Commission's Rules (the "Rules").<sup>5</sup>

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<sup>1</sup> The letter filed by Mr. Ward does not mention WDCG(FM)'s license renewal. Accordingly, we will treat his pleading as an informal objection.

<sup>2</sup> See 47 U.S.C. § 309(d)(1).

<sup>3</sup> In order to establish standing as a listener, a party petitioning to deny a station's license renewal must demonstrate either residence within the station's service area or that petitioner regularly listens to a station. A party with only transient contact with the station does not qualify. See, e.g., *Maumee Valley Broadcasting, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 3487, ¶ 4 (1997), as modified by *CHET-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041 (1999). Based on this principle, we note that Brown, Ashcraft, and Spence also lack standing.

<sup>4</sup> We also note that the Objections submitted by Ashcraft, Brown, Spence, Page and Griffin were not filed by the November 3, 2003, deadline for petitions to deny. See 47 C.F.R. § 73.3516(e).

<sup>5</sup> See 47 C.F.R. § 73.3587.

*Substantive Matters.* In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k)(1) of the Act. That section provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.<sup>6</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>7</sup>

The Commission's role in overseeing program content is very limited. The First Amendment and section 326 of the Act prohibit the Commission from censoring program material and from interfering with broadcasters' freedom of expression. There is no statutory provision or Commission rule that directly prohibits the complained-of broadcasts. Consequently, the only question before us is whether the broadcasts raise a substantial question about the licensee's basic qualifications.

In light of Commission precedent on point, we find that no question regarding the licensee's basic qualifications is raised. Indeed, the Commission recently analyzed the complained-of broadcasts in an enforcement action against the licensee and stated:

Commission action in response to an allegation that a broadcast should be characterized as an 'incitement' to violence or illegal action meeting the "clear and present danger" test is limited to situations where a local court of competent jurisdiction has made such a determination. *See Cattle Country Broadcasting*, 58 R.R.2d 1109, 1113 (1985); *see also Brandenburg v. Ohio*, ("Brandenburg"), 395 U.S. 444, 447 (1969) (speech becomes illegal advocacy when "directed to inciting or producing imminent lawless action and is likely to incite or produce such action."). This aspect of the test requires a court to "make its own inquiry into the imminence and magnitude of the danger said to flow from the particular utterance and then to balance the character of the evil, as well as its likelihood, against the need for free and unfettered expression." *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 843 (1975).

... Under *Brandenburg*, any determination that particular speech poses a "clear and present danger of serious substantive evil" presupposes a familiarity with the circumstances, issues, and concerns of the community where such speech was heard, a familiarity which the Commission, in most cases, does not have and cannot practically obtain. Local authorities responsible for keeping the peace and enforcing the law are better positioned to know and assess the specific and unique circumstances in the ... community and, thus, to determine whether the *Brandenburg* test has been met."<sup>8</sup>

The information before us reflects that no local court of competent jurisdiction has found that any of the material aired over WDCG(FM) met the "clear and present danger" test. Indeed, neither the

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<sup>6</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

<sup>7</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>8</sup> *Capstar TX Limited Partnership*, Memorandum Opinion and Order, 19 FCC Rcd 11303, ¶¶ 9, 10 (EB 2004) (quoting *Spanish Radio Network*, Memorandum Opinion and Order, 10 FCC Rcd 9954, 9959, ¶¶ 21-22 (1995)).

renewal application nor any of the Objections filed reflect that any civil or criminal action of any kind has been brought against Capstar for the complained-of broadcasts. Viewing these circumstances in light of the Commission's clear directive (quoted above) regarding treatment of broadcast speech that allegedly advocates or incites violence, we conclude that that Objectors have failed to raise a substantial and material question of fact which establishes a *prima facie* case supporting the denial of Capstar's license renewal application for WDCG(FM).

**Conclusion.** We have evaluated the WDCG(FM) renewal application pursuant to Section 309(k) of the Act,<sup>9</sup> and we find that WDCG(FM) has served the public interest, convenience, and necessity during the subject license term; there have been no serious violations of the Act or the Rules; and there have been no other violations which, taken together, constitute a pattern of abuse.

In light of the above discussion, and pursuant to Section 309(k) of the Act, and Sections 0.61 and 0.283 of the Rules,<sup>10</sup> the Informal Objections filed by the above-referenced Objectors ARE DENIED, and the application (File No. BRH-20030801COM) of Capstar TX Limited Partnership for renewal of license for WDCG(FM) IS GRANTED.

Sincerely,

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc: Capstar TX Limited Partnership

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<sup>9</sup> 47 U.S.C. § 309(k).

<sup>10</sup> 47 U.S.C. § 309(k); 47 C.F.R. §§ 0.61, 0.283.